

Office Action Summary

Application No.

10/534,837

Applicant(s)

PIONTEK, MANFRED

Examiner

TARLA R. PATEL

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☒ Interview Summary (PTO-413)
Paper No(s)/Mail Date attached.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This office in response to applicant interview on 2/2/08, to vacate the office action mailed on 9/17/08.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 7 recites the limitation "each partial shell" and "partial shell" in the claim which is not clear to the examiner what structure of shell is partial shell since, claim 1 does not disclose the limitation of partial shell, from which the claim 7 depends from.

Thus, there is insufficient antecedent basis for this limitation in the claim.

3. Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim 8 recites limitation that the "fastening a belt" is indefinite since, the originally filed drawings does not show the fastening belt and it is not the clear to the examiner what structure applicant is referring to when claiming fastening belt.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 and 3-9 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Mazzei et al. (6,490,737) in view of Bruckner et al. (4,279,038).

Mazzei et al. disclose a headrest (figure 7) for a patient-bearing surface with rigid-support shell (12, column 7 lines 14-16); the shell is taught to be made from a material that is substantially rigid but easily molded like plastic; the support shell having an approximately horseshoe shaped form (said horseshoe term is broadly interpreted by the examiner to be as having u-shaped structure as shown in figures 9-11, the shape is shown to have approximately horseshoe shape; and a support cushion (figure 9) releasably connectable (please see figure 7 and column 12 lines 22-60) with the support shell, wherein support shell include a central section (57 see fig 9) for supporting the rear or forehead (column 4 lines 42-44), since Mazzei discloses that the device is used for patients in prone or supine position at least the rear of a head of a patient is supported and the limitation that "supporting the rear or forehead of a head of a patient" is a functional recitation that has not been given any patentable weight. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC 112, 6th paragraph, and must be supported by recitation in the claim in sufficient structure to warrant the presence of the functional language. *In re fuller*, 1929 C.D. 172; 388 C.D. 279., further the head rest of Mazzei et al. is capable of performing the function of supporting the forehead of a head of a patient since, it is known to be headrest (column 4 lines 42-44), and having has a support surface of approximately spherical shell shape (see figure 9), and with two side sections spaced from one another (two side section were broadly interpreted

Art Unit: 3772

by the examiner as two side of line of symmetry as disclosed further below is one side 30 and other opposite side of 30 as shown in figure 9 is interpreted as two side of applicant's claimed limitation), whose axis runs parallel to a line of symmetry of the support shell (as broadly the examiner interpreted a line of symmetry of support shell as a line which can run right in middle of the support from the top to bottom of the support) a cheekbone (please see figure 9, 55 is cheek bone support) on each of the side sections which cheekbone support projects in the downward direction (see figure 9). However, Mazzei et al. does not discloses the side sections each having a support surface approximately a common cylindrical shape and cheekbone support projects in the direction toward the other side section.

However, Bruckner teaches a headprotector made of elastic material for athletes having a support surface of approximately spherical shell shape (see figure 1), two side sections spaced from one another (see figure 1 that shows two side sections at reference numeral 10), the side sections each having a support surface approximately a common cylindrical shape (see figure 1), whose axis runs parallel to a line of symmetry of the support shell; the examiner has interpreted the a straight line which can run right in middle of the support from the top to bottom of the support is the line of symmetry of the support shell; and a cheek bone support (9) on each side of the side sections, each cheek bone support is projecting toward the other side section (see figure 1) since it is shown that the cheek bone support (9) is projecting towards the other side section. Further, Buckner discloses the side sections include end portions (10) separated from each other to define an open region for mouthparts of the patient's face to fit therein

(see figure 1), as shown by the end of element 10 defining a space 12 in between them which obviously fit mouthparts of the user . At the time of the invention was made, it would have been obvious design choice to one having ordinary skill in the art to modify the shape of the support shell of Mazzei et al. to have side sections each having a support surface approximately a common cylindrical shape and cheekbone support projects in the direction toward the other side section, as taught by Buckner to have comfort while providing necessary support and protection.

With respect to claim 3, the support shell is made of plastic (12, column 7 lines 14-16). With respect to claim 4-8, Mazzei et al. discloses at least two stick pins (73) designed for insertion into through going bores (60) in the support shell, the headrest or each partial rest (see fig 7) is connected to fastening block (62) for holding it to a profiled rail (66), the headrest on the outer edge of each side section is formed an eye (space 27 and 37, see figure 7) for the fastening of a belt (24) for fixing the head of a patient to the headrest and each pin having a cylindrical shaft with cylindrical shaft (61, see fig 7) and each has an elastically resilient band with an external diameter slightly larger than the diameter of bores (see fig 7) and device is divided into two mirror image similar partial supports along its line of symmetry (see fig 7, column 12 lines 27-30).

Response to Arguments

6. Applicant's arguments with respect to claims 1 and 3-8 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARLA R. PATEL whose telephone number is (571)272-3143. The examiner can normally be reached on M-T 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tarla R Patel/
Examiner, Art Unit 3772

/Patricia Bianco/
Supervisory Patent Examiner, Art Unit 3772